

## 19.107 FAMILY MEDICAL LEAVE ACT (FMLA)

### **References:**

Procedure 16.110, Personnel Accounting and Distribution  
 Procedure 19.105, Sick/Injured With Pay and Special Leaves  
 Family Medical Leave Act (FMLA)  
 FOP/City Labor Agreement  
 AFSCME/City Labor Agreement  
 Cincinnati Organized and Dedicated Employees (CODE)/City Labor Agreement  
 City of Cincinnati Human Resources Policies and Procedures, Section 4.3

### **Definitions:**

Family Medical Leave Act (FMLA) Eligible Employee:

- An employee who has worked at least 1250 hours during the past 12-month period.

Serious Health Condition:

- Inpatient care (admitted) in a hospital, hospice or medical care facility and including any period of incapacity.
- Continuing treatment (2 or more times) by a health care provider involving a period of incapacity of more than 3 consecutive days, or treatment on at least one occasion which results in a regimen of continuing treatment.
- Any period of incapacity due to pregnancy or prenatal care. Generally six weeks Sick with Pay-Maternity is an approved recovery time. Additional SWP-M time will be approved if the employee's physician decides additional time is needed for recovery.
- Any period of incapacity due to a chronic serious health condition defined as one which requires periodic visits or continues over an extended period of time for treatment (e.g., asthma, diabetes, epilepsy, chemotherapy treatment, radiation or dialysis treatments, etc.).
- Cosmetic surgery, common cold, flu, ear ache or upset stomach is not generally considered a serious health condition.
- Absence due to an employee's use of alcohol or drugs is not covered under FMLA. Absence for treatment of substance abuse is eligible for FMLA leave.

Form WH-380, Certification of Health Care Provider:

- This form contains statements of medical facts to support certification for FMLA leave. It is to be completed by the treating health care provider. A Form WH-380 is required for FMLA approved leave.

**Purpose:**

Ensure necessary documentation of FMLA leave requests.

Establish a uniform Department procedure for requesting, recording and reporting personnel using the provisions of FMLA.

**Policy:**

It is City policy to provide up to 12 weeks of family and medical leave during a 12-month period to eligible employees in accordance with the provisions of FMLA.

The use of FMLA leave cannot result in the loss of any employment benefit accrued before the leave began, e.g., sick time sell back, sick usage incentive, etc.

The employee's private physician will evaluate the medical condition of an employee and authorize the clearance for return to duty following FMLA leave. The Employee Health Service (EHS) physician will not be contacted for non-duty related illness/injury medical evaluations prior to the return to duty for FMLA approved leave. A supervisor can contact the EHS physician for clarification of medical terminology contained in the WH-380. To comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA) laws, the employee's personal information will not be released.

When FMLA leave is requested by the employee or is determined to be FMLA leave by the supervisor, the supervisor will assist the employee in completing a Form 25S, Request for Leave of Absence. The supervisor will advise the employee a Form WH-380 must be submitted for the time off to be approved as FMLA leave. A Form WH-380 must be submitted by the employee whenever the FMLA leave request is the first instance of this type of illness or injury.

An employee may be required to furnish re-certification (Form WH-380) of an illness relating to a previous FMLA leave. If this occurs, the supervisor will advise the employee that they must submit another Form WH-380. A supervisor cannot request a re-certification more often than every 30 days for the same illness.

A Form WH-380 may be required for pregnancy or prenatal care related situations. In addition, time off relating to this situation can be retroactively designated FMLA for up to one year.

When the employee has a serious health condition that renders the employee unable to perform the functions of his/her position or is caring for a qualifying family member who has a serious health condition, the supervisor may require a physician's statement. If that occurs, a Form WH-380 must be submitted within 15 days to receive approval for FMLA leave.

**Information:**

Personnel Section can be contacted for assistance in the determination or interpretation of FMLA requests. Additional information is available in Human Resources Policies and Procedures, Section 4.3.

FMLA provides eligible employees the right to take paid/unpaid leave for the conditions listed below:

1. Birth of an employee's child and to care for that child and/or any period of incapacity due to pregnancy or prenatal care.
2. Placement of a child with the employee for adoption or foster care.
3. Care for an employee's spouse, child, or parent with a serious health condition.
4. A serious health condition that prevents the employee from performing the functions of his/her position.

FMLA requires an employee to take the allotted 12 weeks within a one year period of time, starting from the date of the first FMLA incident.

If both husband and wife work for the City and each wish to take family leave for numbers 1-3 above, they may take a combined total of 12 weeks leave (not 12 weeks each). FMLA leave taken for the birth, adoption or placement of a child must be taken during the first 12 months after the arrival of the child.

Intermittent leave or reduced scheduled leave is authorized if medically necessary for a serious health condition of the employee or his/her spouse, child or parent. The leave may be taken in 12 consecutive weeks or used intermittently (take a day when needed over the year). It may in some cases be used to reduce the workload or workday, resulting in a reduced hour schedule. In all cases leave can not exceed 12 weeks over a 12-month time period.

Intermittent or reduced work week leave taken for the birth, adoption or placement of a foster child must be agreed to by the employee and the employer.

Intermittent or reduced work week leave taken for a serious health condition should be scheduled with a supervisor prior to taking the leave. If this is not possible, the employee must provide a completed Form WH-380 indicating intermittent or reduced leave is necessary.

**Procedure:****A. Family Medical Leave Act (FMLA)**

1. The Department will follow the current City guidelines as outlined in Human Resources Policies and Procedures Section 4.3, Police Department procedures, and/or current labor agreements.

2. FMLA approval will occur when the employee's supervisor approves the time off. Final FMLA approval occurs when the employee submits a completed Form WH-380. A Form WH-380 must be submitted by the employee whenever the FMLA leave request is the first instance of this type of illness or injury. Supervisors requiring interpretation of statements or medical terminology on the Form WH-380 should contact the City physician. The employee's personal information will not be released.
  - a. Supervisors will notify the employee that FMLA requested leave is approved by providing a copy of the completed Form 25S.
    - 1) For phone requests, mail a copy of the Form 25S to the employee.
  - b. Personnel Section will review all Forms 25S requesting FMLA leave. Notify the employee's district/section/unit when time off does not meet FMLA guidelines.
3. Leave not taken as FMLA but assumed to qualify for FMLA during the employee's time off can still be counted as FMLA if:
  - a. The employee advises his/her immediate supervisor while on leave or within two days after returning to work.
    - 1) The employee must provide a Form WH-380 verifying that the leave was an FMLA qualified leave. An employee must submit a completed Form WH-380 within 15 days of returning to work.
  - b. Compensatory time off cannot be charged to FMLA. If an employee uses compensatory time for a health-related incident and later determines he/she is eligible for FMLA, the initial compensatory time used by the employee must be deducted from the employee's compensatory time balance. A new Form 25S must be submitted to a supervisor for approval in addition to Form WH-380 for any subsequent leave.
    - 1) Compensatory time cannot be counted against the employee's 12 weeks of FMLA leave.
4. Unpaid FMLA leave
  - a. Sick leave and vacation leave must be depleted before an employee can be granted unpaid FMLA leave.
    - 1) No City employee can be required to use compensatory time in lieu of unpaid FMLA leave.
    - 2) AFSCME employees cannot be required to use vacation time or compensatory time in lieu of unpaid FMLA leave.

## B. Employee Responsibilities: FMLA Requests

1. Notify a supervisor from the assigned unit as soon as practical. Submit a Form 25S detailing the reason for the FMLA leave request. For phone requests, the supervisor will complete the Form 25S in detail, including side 2. Include the following information:
  - a. The specific nature of the illness or injury.
    - 1) The employee should advise the supervisor if the illness or injury is believed to be or is FMLA leave eligible.
  - b. How long you expect to be off duty.
  - c. Notice of court appearances, off-duty details, meetings, public appearances and training dates that may need to be rescheduled.
2. Provide a completed Form WH-380 when required.
3. Department employees will be governed by their current labor contract and the Human Resources Policies and Procedures.

## C. Supervisor Responsibilities

1. Upon receiving notice an employee is requesting FMLA:
  - a. Document the information provided by the employee on a Form 25S and designate if the requested leave is FMLA eligible. Process the Form 25S immediately.
    - 1) Assist the employee as necessary in filling out the Form 25S, including side 2. Give or send a copy of the Form 25S to the employee. This provides the employee with immediate approval of FMLA leave.
    - 2) In the "Reason" section of the Form 25S explain in detail why the employee is requesting FMLA leave.
    - 3) Indicate the recommendation of approval or disapproval of the use of FMLA leave on the Form 25S.
      - a] If unable to determine if the leave is FMLA eligible but it is believed to be, approve the leave as FMLA and provide the employee with a copy of the completed Form 25S. This gives the employee immediate approval of FMLA leave pending the receipt of a Form WH-380.
        - 1] The supervisor must list specific details indicating why the leave is FMLA eligible.

- 4) Forward the Form 25S and Form WH-380 through the chain of command to the district/section/unit commander.
- 5) The supervisor will notify the employee if the time off does not meet FMLA guidelines as determined by Personnel Section.

D. Responsibilities of the District/Section Commander

1. Upon receipt of a Form 25S for FMLA leave:
  - a. Review and sign indicating approval or disapproval of the use of FMLA leave.
    - 1) The district/section commander will ensure the required notification of approval or disapproval is made within the time specifications established by FMLA.
  - b. Forward the original to Personnel Section daily. Ensure the employee submits a completed Form WH-380 to receive final FMLA approved leave.
    - 1) Maintain a copy in the employee's Medical Jacket.
2. When an employee returns to duty, note the date of return on the unit copy. Send a copy to Personnel Section.
3. Ensure the district/section/unit timekeeper tracks all FMLA leave so no employee is carried on FMLA leave more than 12 weeks in a 12-month period.
4. Ensure the appropriate Time Book Symbols are used to reflect FMLA time taken.

E. Responsibilities of Personnel Section

1. Receive copies of Form 25S for FMLA.
2. Review requests for FMLA to ensure Department compliance.
3. File the Form WH-380 with the corresponding Form 25S. FMLA time off cannot receive final approval without the required Form WH-380.
  - a. Personnel Section reviews all FMLA requests as the Police Chief's designee.
    - 1) If the request does not meet FMLA guidelines, notify the employee.
4. Maintain an updated list of employees who have taken leave under the provisions of FMLA.

5. Provide the Police Chief with a list of Department employees on FMLA leave through the weekly leave report.
6. Serve as the Department liaison with EHS.